



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,255	03/05/2007	Nathaniel Gordon Hilary Lucas	FISHER-Z-PCT-US	9745
28862 7590 08/05/2010 HUDAK, SHUNK & FARINE, CO., L.P.A. 2020 FRONT STREET SUITE 307 CUYAHOGA FALLS, OH 44221				
EXAMINER				
LEFT, STEVEN N				
ART UNIT		PAPER NUMBER		
1782				
MAIL DATE		DELIVERY MODE		
08/05/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/574,255

Applicant(s)

LUCAS ET AL.

Examiner

STEVEN LEFF

Art Unit

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2010.
2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) 1-10 and 12-20 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 11 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 30 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date 3/30/06
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-10 and 13-20 drawn to manufacturing a mold plate.

Group II, claim(s) 11, drawn to a method of manufacturing chocolates.

Group III, claim(s) 12, drawn to a chocolate product.

The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

With respect to group I, and group II since group I does not require the method of providing chocolate to a graphics plate, locating the mold plate in register with the designs of the of the first color chocolate, filling the recess with another color chocolate, and allowing the chocolate to set and thus groups I and II as listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they further lack the same or corresponding special technical features since Group I does not require an edible and therefore the former plate of group I can be used to mold non-edible products.

Further Group II and Group III lack the same or corresponding special technical features since the product of group III can be another and materially different process such as a process which does not require using a mold plate comprising a silicone rubber compound with a hardener to form a solution, applying a vacuum to the solution to remove at least the majority of the air bubbles in the solution, pouring a preset weight of the solution into a mould former, and allowing the solution to settle, applying a clamping pressure to the mould assembly and allowing the silicone rubber to at least initially cure; and allowing the rubber to post cure before use and instead uses a different former plate and thus do not relate to a single general inventive concept under PCT Rule 13.1 as they further lack the same or corresponding special technical features.

With respect to group I, and group III, since group I does not require chocolate they lack the same or corresponding special technical features and thus since Group I does not require an edible, therefore the former plate of group I can be used to mold non-edible products and thus groups I and III as listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they further lack the same or corresponding special technical features.

During a telephone conversation with Mr. Hudak on 6/25/10 a provisional election was made to prosecute the invention of Group II, claim 11.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-10 and 12-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Lucas et al. (WO 97/39636).

Lucas et al. teach a method of manufacturing chocolates. More specifically Lucas et al. teach engraving a plurality of images (pg. 4 lines 22-25), corresponding to the design, on a graphics plate at preselected locations (pg. 4 lines 22-25), applying chocolate of at least a first color to the graphics plate to fill the engraved image thereon to form the design (pg. 5 lines 16-19), and removing any excess chocolate (pg. 5 lines 20-21), locating a mold plate on the graphics plate with the recesses in the mold plate in register with the designs of the at least first color chocolate (pg. 5 lines 22-25), filling the recesses with another color chocolate (pg. 5 lines 24-26), allowing the chocolate to set (pg. 5 lines 27-29), and removing the final chocolates from the mould plate (pg. 5 lines 29-30).

It is noted with respect to the producing of the mold plate former, which is then used to mold a silicon mold, which is then used to mold the chocolates, and specifically with respect to the steps of forming the former plate, having a planar surface bounded by a border corresponding to the external dimensions of the mold plate, by producing a plurality of former shapes, corresponding to the recesses to be formed in the mold plate, locating the former shapes in a template operable to locate the former shapes on the former plate, applying adhesive to the former shapes, locating the former shapes on the former plate, using the template, to fix the former shapes to the former plate; producing a rubber mold plate-using the mold plate former by mixing a silicone rubber compound with a hardener to form a solution; applying a vacuum to the solution to remove at least the majority of the air bubbles in the solution, pouring a preset weight of the solution into a mold former, and allowing the solution to settle applying a clamping pressure to the

mold assembly and allowing the silicone rubber to at least initially cure; and allowing the rubber to post cure before use.

These steps of manufacturing the former for a mold plate for chocolates are with respect to the construction of the mold template which is an intermediate device which is used for construction of the mold. Thus, with respect to the method of molding the chocolates with a design, since Lucas et al. teach the same device used to mold the chocolates, specifically an engraved graphics at preselected locations, and a mold plate on the graphics plate with the recesses in the mold plate in register with the designs of the at least first color chocolate (pg. 5 lines 22-25), Lucas et al. teach all of the currently claimed method steps for producing chocolates.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven Leff/
Examiner, Art Unit 1782

/Rena L. Dye/
Supervisory Patent Examiner
Art Unit 1782

Application/Control Number: 10/574,255
Art Unit: 1782

Page 6